



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: James R. Slattery - Relocation - Temporary  
Quarters Subsistence Expenses - Meal Costs  
File: B-232547  
Date: August 22, 1989

### DIGEST

1. A labor organization, on behalf of a Federal Aviation Administration (FAA) employee, requests that the Comptroller General vacate our Claims Group's denial of the employee's claim for additional temporary quarters subsistence expenses on the ground that a formal grievance had been filed at the time of the GAO settlement. Since the claim was properly submitted to GAO by the agency at the employee's request and settled, according to law, without the Claims Group being advised of the grievance, the settlement is valid and will not be vacated.
2. An employee's claim for additional temporary quarters subsistence expenses was denied by our Claims Group which sustained the agency's determination as to reasonable amounts for meals. The employee appeals that settlement on the basis of the collective bargaining agreement between the agency and a union which he argues makes inapplicable an agency guideline of 46 percent of per diem as being a reasonable rate for meals. Even if the guideline is not applicable, however, the agency was required by law and regulations to limit reimbursement to an amount it determined as "reasonable." The agency determined a reasonable amount to be 55 percent in this case, and that determination will not be disturbed since there is no showing it is clearly erroneous, arbitrary, or capricious.

### DECISION

The National Association of Air Traffic Specialists, Western-Pacific Region, on behalf of James R. Slattery, an employee of the Federal Aviation Administration (FAA), appeals our Claims Group's denial of his claim for reimbursement of meal expenses in excess of 55 percent of the maximum daily rate, the amount allowed by the FAA. Our

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Claims Group's settlement is sustained for the reasons explained below.

#### BACKGROUND

Mr. Slattery presented a claim to the FAA for subsistence expenses he incurred while occupying temporary quarters incident to a change of official station in July and August 1986. The FAA originally disallowed that part of the claim for meals that exceeded 46 percent of the maximum daily allowance, in accordance with subparagraph c of paragraph 4-0308, DOT Order 1500.6A (FAA 1500.14A), Travel Manual, and decisions of this Office, which suggested the issuance of such guidelines as a standard of reasonableness for the reimbursement of subsistence expenses.<sup>1/</sup> The FAA subsequently adjusted reimbursement for meals upward to 55 percent of the maximum daily allowance upon additional justification submitted by Mr. Slattery. However, Mr. Slattery felt he was entitled to the full amount claimed and asked that his claim be forwarded to our Office.

Upon Mr. Slattery's request, the FAA properly forwarded the claim to our Office with an administrative report, in accordance with our procedures found in 4 C.F.R. Part 31 (1987). Our Claims Group denied the claim for additional reimbursement in settlement Z-2865195, October 13, 1987, and the union appeals the action on behalf of Mr. Slattery, requesting that we vacate the settlement because Mr. Slattery had filed a formal grievance regarding the matter.

The union also requests that if we do not vacate the settlement, we reconsider the denial based on provisions in the 1984 negotiated labor-management agreement between the FAA and the union which pertain to reimbursement for permanent change-of-station expenses.<sup>2/</sup>

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1/ See Harvey P. Wiley, 65 Comp. Gen. 409 (1986), and Clyde G. Cobb, B-198093, Nov. 10, 1980.

2/ Although this request for review was not submitted to us under the procedure published in 4 C.F.R. Part 22 (1988), concerning matters of mutual concern to agencies and labor organizations, both the union and the agency have submitted comments concerning the merits of the case.

## OPINION

The claim was properly submitted to the GAO through an administrative agency, and it was settled in accordance with the basic entitlements provided by law and regulation. When the Claims Group's settlement was issued, there was nothing in the record to indicate that the matter was the subject of a formal grievance proceeding at the FAA. Since our Claims Group had no knowledge of the grievance filed under a collective bargaining agreement, this was a proper exercise of our authority to settle claims against the government under 31 U.S.C. § 3702 (1982). See generally, Samuel R. Jones, 61 Comp. Gen. 20 (1981). Therefore, the Claims Group's settlement was valid and will not be vacated.

Regarding the union's alternative request that we review the settlement in light of provisions contained in the collective bargaining agreement, the union highlights several articles of the agreement which it interprets to require reimbursement of the full amount of Mr. Slattery's claim.

The union refers to Article 46, which specifically deals with "moving expenses." Section 2 thereof provides:

"Employees shall be reimbursed for subsistence costs while occupying temporary quarters up to the maximum period prescribed by law or regulation. The amount of such subsistence allowance payable for temporary quarters is prescribed in agency directives."

The union states that at the time the collective bargaining agreement was entered into, the agency regulations did not include the 46 percent guideline initially used by the FAA in questioning the reasonableness of Mr. Slattery's subsistence expenses. It then points to Article 66, which provides that any provision of the agreement shall be a valid exception to and shall supersede any existing FAA rules, regulations and practices; and Article 72 under which the parties agree to consult prior to implementing changes in personnel policies, practices and matters affecting working conditions that are within the scope of the employer's authority. The union argues that the agency did not consult with it prior to implementing the 46 percent guideline and, therefore, the rule does not apply to the union's members; instead, the union argues, the maximum rate is applicable since that was the situation when the agreement was negotiated and it stands as an exception to the 46 percent guideline under Article 66.

The FAA states that the 46 percent guideline is no longer used for claims submitted by bargaining unit employees because of the union's position that the guideline was a change in working conditions which was not coordinated with the union. However, the agency says it still reviews claims of this type for reasonableness, as required by the Federal Travel Regulations and decisions of our Office. The FAA states further that Mr. Slattery's claim was reviewed for reasonableness, and when he submitted additional justification to support his claim, he was allowed an amount equal to 55 percent of the maximum daily allowance for meals. Therefore, his claim was not settled based on the 46 percent guideline.

The statutory authority to pay temporary quarters subsistence expenses for transferred employees and their families is found in 5 U.S.C. § 5724a(a)(3), which provides for reimbursement of such expenses, under prescribed regulations, not in excess of the maximum per diem prescribed for the locality. Implementing regulations are found in the Federal Travel Regulations (FTR), FPMR 101-7 (Sept. 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). Under FTR, paragraph 2-5.4, reimbursement is allowed only for actual subsistence expenses provided they are incident to occupancy of temporary quarters and are "reasonable" as to amount. These provisions are restated in the FAA regulations.

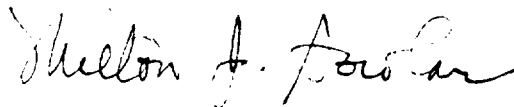
Under the FTR a determination must be made on an individual basis as to whether the amounts an employee claims are "reasonable," and that is the responsibility of the employing agency in the first instance. See Harvey P. Wiley, 65 Comp. Gen. 409 (1986), and cases cited therein. We have suggested that agencies issue written guidelines as a basis for review of an employee's expenses and have approved as a reasonable guideline for meals and miscellaneous expenses 46 percent of the statutory maximum, provided that it does not operate as an absolute bar to payment of additional amounts when justified by the employee because of unusual circumstances. Harry G. Bayne, 61 Comp. Gen. 123 (1981). Apparently this was the type of guideline the FAA sought to establish.

Whether or not the FAA was required to consult with the union in establishing the 46 percent guideline to aid in making the reasonableness determinations required by the FTR and restated in the FAA regulations, it is clear that the agency was required by the regulations to make such determinations on an individual basis whether or not it had a specific guideline in effect. This it did in Mr. Slattery's case, eventually allowing him 55 percent based on its evaluation of his circumstances.

Contrary to the union's contentions, the agency was not required to reimburse Mr. Slattery the maximum amount payable, unless of course it determined such amount to be reasonable under the circumstances, which it did not do. In our view the agency's actions do not conflict with Article 46 of the Agreement which merely provides that the amount of the subsistence allowance "is prescribed in agency directives." As is indicated above, the FTR provision, and its restatement in the FAA regulations, limit the amount payable to that which is "reasonable."

The agency has made its determination as to what was a reasonable amount in this case, and we will not substitute our judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary or capricious. Harvey P. Wiley, supra. There has been no such showing in this case.

Accordingly, our Claims Group's settlement, denying additional reimbursement, is sustained.



**Acting** Comptroller General  
of the United States